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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,721	01/27/2004	Michael J. Litchman	2316-6296US	2564
24247	7590	11/16/2007		
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT 3781	PAPER NUMBER
			NOTIFICATION DATE 11/16/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/765,721

Applicant(s)

LITCHMAN, MICHAEL J.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 12, 15-23, 38-42, 49 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 14, 24-37, 43-48, 50-57 and 59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-11, 13, 14, and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Mooney et al. (US 3,991,446). For the purpose of examination, the claims are considered to be drawn to the subcombination of the closure only.

Disclosed is base **14** sized and configured to fit within and substantially close a bore of a tubular member, at least one movable structure **17** is movable relative to the base and substantially within a periphery thereof, at least one engagement feature **19** configured to engage an associated wall of a tubular member from within the tubular member, and at least one attachment member **16,13** structurally coupling the at least one engagement member and at least one movable structure to the base.

Claim Rejections - 35 USC § 103

3. Claims 28-37, 43-48, 50-57, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vajtay (US 3,913,774) in view of Mooney,

Vajtay discloses a tubular member having an outer surface and an inner surface defining a wall therebetween, wherein the inner surface defines a bore, the bore extending between a first end and a second end of the tubular member, and an associated wall structure in the form of an aperture, or opening, formed generally on the sidewall of the tubular member at a location longitudinally spaced from the bore end. Vajtay does not teach a closure as set forth in the instant claims.

Mooney teaches a closure having a base **14**, at least one movable structure **17** movable relative to the base and substantially within a periphery thereof, at least one engagement

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feature **19** configured to engage an associated wall structure of a tubular member from within the tubular member, and at least one attachment member **16,13** structurally coupling the at least one engagement member and at least one movable structure to the base. The diameter of the base is larger than the diameter of the outermost, radially extending portion of the engagement features. Thus, the base is not configured to fit within and substantially close an end of the bore of the tubular member while the at least one engagement feature engages an associated wall structure in the form of an aperture of the side wall of the tubular member as in Vajtay.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the closure element of Mooney for the closure disclosed by Vajtay and to form the closure of Mooney of a size and dimensions to fit the tubular member of Vajtay to obtain predictable results of completely inserting and locking the closure within the tubular member of Vajtay, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Doing so allows for a tubular member having a closure within the parameter of the tubular member and provides an uninterrupted, continuous surface except for the openings in the tubular sidewall.

Response to Arguments

4. The rejection in view of Sullivan is withdrawn.
5. Applicant's arguments filed August 27, 2007 have been fully considered but they are not persuasive.

Regarding the subcombination claims, the patent to Mooney anticipates the claims as set forth above since the closure element is sized and configured to fit within a tubular member. Again, it is pointed out that only the subcombination of the closure is set forth in claims 1-11,13,

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14, and 24-27. The closure of Mooney is capable of being used with another tubular member not illustrated in the patent thereof in the manner set forth in the instant claims. Moreover, there is no structure set forth to define the "associated wall structure of the side wall of the tubular bore". The wall structure could be in inward projection on the sidewall.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is again noted that the features upon which applicant relies (i.e., the wall structure of the side wall of the tubular member being an opening or aperture) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The structure of the "associated wall structure" of the side wall of the tubular member is not set forth in the claims. Thus, a radially inwardly projecting structure of a tubular member sidewall is capable of being engaged in a radial direction by the radially biased engagement feature(s).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts

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that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH

November 9, 2007

/Robin A. Hylton/
Robin A. Hylton
Primary Examiner
GAU 3781